

**Creekside Mushrooms, Ltd. and United Steelworkers of America, AFL-CIO, CLC. Case AO-319**

March 22, 1995

**ADVISORY OPINION**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on February 3, 1995, Creekside Mushrooms, Ltd. (the Employer) filed a Petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A proceeding, Case PLRA-C-95-1-W, is currently pending before the Pennsylvania Labor Relations Board in which the Employer is alleged to have failed and refused to recognize and bargain with the United Steelworkers of America, AFL-CIO, CLC (the Union) as exclusive collective-bargaining representative for a unit of the Employer's production and maintenance employees.

2. The Employer is engaged in growing, harvesting, packaging, and nonretail sale of mushrooms from its sole place of business located at One Moonlight Drive, Worthington, Pennsylvania.

3. During the first 6 months of operations, from July 1 to December 31, 1994, Creekside had a gross volume of business of approximately \$5.7 million. It is estimated that, on an annual basis, it will ship approximately \$12 million worth of mushrooms directly to points located outside the Commonwealth of Pennsylvania. During the first 6 months of business, Creekside received goods and materials valued at approximately \$700,000 directly from points located outside the Commonwealth of Pennsylvania for use at its operations at Worthington, Pennsylvania. It is estimated that, on an annual basis, Creekside will receive goods and materials valued at approximately \$1.5 million directly from points located outside the Commonwealth of Pennsylvania for use at its Worthington, Pennsylvania operations.

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data, and the Pennsylvania Labor Relations Board has made no findings of fact or conclusions regarding this commerce data.

5. There are no representation or unfair labor practice proceedings involving the Employer pending before the Board.<sup>1</sup>

All parties were served with a copy of the Petition for Advisory Opinion. On March 6, 1995, the Union filed a brief in which it contends that the production and maintenance employees are *agricultural laborers* within the meaning of the Act. On March 6, 1995, the Employer filed a response indicating that its position is adequately set forth in the petition.

Having duly considered the matter,<sup>2</sup> the Board is of the opinion that it would assert jurisdiction over the Employer. The Employer projects that it will annually ship approximately \$12 million worth of mushrooms directly to points located outside the Commonwealth of Pennsylvania and will receive goods and materials valued at approximately \$1.5 million directly from points located outside the Commonwealth of Pennsylvania for use at its Worthington, Pennsylvania operations. The Employer thereby meets the commerce standard for nonretail enterprises. *Siemons Mailing Service*, 122 NLRB 81 (1959).

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.<sup>3</sup>

<sup>1</sup> A petition was filed with the Board in Case 6-RM-701 on February 9, 1995. However, the petition was dismissed by the Regional Director on March 1, 1995.

<sup>2</sup> The Board has delegated its authority in this proceeding to a three-member panel.

<sup>3</sup> The Board's Advisory Opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the unit under Sec. 9(c) of the Act, or whether the production and maintenance employees are *employees* within the meaning of Sec. 2(3) of the Act, or are *agricultural laborers*. See generally Sec. 101.40 of the Board's Rules.